



Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: September 14, 2010

COUNCIL DISTRICT: Citywide
SNI AREAS: All

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO AMEND CHAPTER 20.50 TO ADD A NEW PART 4 CLARIFYING SETBACK REGULATIONS FOR THE INDUSTRIAL DISTRICTS, TO AMEND SECTIONS 20.100.110 AND 20.100.1210 OF CHAPTER 20.100 TO ALLOW UTILITY PROVIDERS TO SIGN DEVELOPMENT PERMIT APPLICATIONS FOR UTILITY WORK OCCURRING ENTIRELY WITHIN PUBLIC SERVICES EASEMENTS OR PUBLIC UTILITY EASEMENTS, TO AMEND SECTION 20.200.700 OF CHAPTER 20.200 TO CLARIFY THE DEFINITION OF FRONT LOT LINE AND MAKING OTHER RELATED, TECHNICAL AND NONSUBSTANTIVE CONFORMING AMENDMENTS TO TITLE 20.

RECOMMENDATION

Planning staff recommends that the Planning Commission recommend to the City Council the approval of an ordinance amending Title 20 of the San José Municipal Code to clarify setback regulations for the Industrial Zoning Districts, allow utility providers to sign development permit applications for utility work occurring entirely within public service easements (PSE) or public utility easements (PUE), to clarify the definition of front lot line, and to make other related technical and non-substantive amendments.

OUTCOME

The proposed ordinance would facilitate the upgrading of utility infrastructure throughout San Jose by streamlining the process for placement of utility structures in PSE/PUE areas where the PSE/PUE has been specifically dedicated for that purpose, and would provide greater clarity regarding Zoning Ordinance setback requirements relative to utilities and other structures.

BACKGROUND

Public service easements (PSE) and public utility easements (PUE) are areas of private property expressly dedicated to public use for public service/public utility facilities including, poles, wires, conduits, gas, water, heat, mains, and other similar facilities. These easements are often located parallel and adjacent to a public street. Such easements are generally dedicated through the Subdivision Map Act process to ensure appropriate areas for public utilities and other public facilities. Landowners either agree to such an easement at the time of creation or accept the property subject to the existing easement and with full awareness of the easement.

The Zoning Ordinance requires an Administrative Permit or other Development Permit for construction of a utility structure in a PSE, PUE, or in a private easement and specifies minimum development criteria and conditions relative to the location, size, design, and operation of such structures. These regulations are intended to insure that utility structures are installed in a manner that is compatible with the site and the surrounding area, especially when they are located in residential areas. Currently, the Zoning Ordinance requires that the application for an Administrative Permit or other Development Permit be signed by the property owner, a qualified tenant (one with an exclusive recorded lease of 5 years or more), or someone with a qualified power of attorney for the property owner or qualified tenant. In order for a utility company to obtain City approval for construction of a utility structure in a PSE or PUE, they must first obtain the signature of the property owner or other qualified applicant. This signature requirement makes the valid, intended use of the area subject to agreement by the landowner, even though the landowner cannot legally reject the use if the utility company is acting within the scope of their easement rights.

AT&T is currently working with the City to implement a city-wide upgrade of its telecommunications network. This upgrade provides residents innovative services (including IPTV), faster access to the internet, and a choice of video service providers. The work is nearly complete; the only areas that remain to be upgraded are locations where AT&T and the City want to locate the utility equipment in PSEs or PUEs on private property. There are 52 PSE/PUE areas to be upgraded. Each area serves many dwelling units so there are approximately 19,000 living units which cannot receive service until these PSE/PUE areas are upgraded. The current requirement for property-owner signature of the permit application raises concern that individual property owners could delay implementation of the proposed utility upgrades even though there is a PSE or PUE over the properties specifically for the purpose of accommodating facilities of this type.

ANALYSIS

Proposed Modification of Signature Requirement

The proposed ordinance modifies Section 20.100.110 of the Zoning Ordinance to authorize the agent of a utility entity that may lawfully utilize a PSE or a PUE to be the sole signatory of any

permit application for construction of a utility structure within such PSE or PUE when the activity falls within those easement rights. The amendment is narrowly drawn to allow only utilities covered by the easement to sign the permit application. Other entities that are not qualifying utilities would still require landowner signature. The proposed amendment does not limit the ability of the property owner and owners of adjacent properties to participate in the permit process. Section 12.100.1210 currently requires notification of owners of property abutting the subject site, and the proposed amendment requires that qualifying utilities notify owners of the subject property a minimum of ten days prior to submitting the application.

This notification must include the location and physical dimensions of the utility structure, the anticipated dates that work will occur on the property, the time and duration of any service disruptions, contact information and hours for the utility provider, and notice of the Administrative Permit requirement. This notice would enable property owners to provide input into the permit process in regard to conformance with Zoning Ordinance requirements or any other relevant issue.

Based on these provisions, staff concludes that the proposed ordinance would facilitate the installation of upgraded and innovative utility infrastructure to serve the citizens of San Jose in PSE and PUE areas that have been set aside expressly for that purpose, without precluding property owners from providing appropriate input into the permit process.

Clarifying Setback Amendments

The proposed ordinance includes two additional clarifying amendments relative to setback areas; the first provides setback regulation for the Industrial Zoning Districts and the second clarifies the definition of Front Lot Line relative to measuring setbacks.

Setback Regulations for Industrial Zoning Districts

Currently, the Residential and Commercial Chapters of the Zoning Ordinance contain specific regulations governing what can occur within a setback area (see Part 4 of Chapter 20.30 and Part 4 of Chapter 20.40). These regulations generally preclude structures within a setback area, but provide for specific types of encroachments. These encroachments include minor building encroachments, utility lines necessary to serve the site (both above and below ground), as well as driveways and walkways to serve the site. Like the Residential and Commercial Districts, the Industrial Zoning Districts specify minimum setbacks from property lines, but the Industrial Chapter does not currently include explicit regulations regarding what type of encroachments are allowed within these setback areas. The proposed ordinance provides a new Part 4 in the Industrial Chapter (Chapter 20.50) that clarifies these setback regulations. The proposed regulations are the same as those currently applicable in the Commercial Districts and also reflect current and past practice.

Front Lot Line Clarification

A setback is "...the minimum distance by which buildings, structures and parking must be separated from any lot line." Section 20.200.700 of the Zoning Ordinance defines a Front Lot Line as "...the boundary line of a lot which abuts a public street." In many instances, a public street consists of an

easement over private property, so that the property actually extends to the center of the street or in some cases encompasses the entire street. In such situations, staff has consistently interpreted this boundary line to be the boundary separating the public street easement from the non-street portion of the property, so that the front setback is always measured from the edge of the street right of way, regardless of whether the street is held by the City as an easement or in fee. Staff is proposing to clarify the definition consistent with this interpretation as follows:

"Front lot line" is the boundary line of a lot which abuts the closest edge of a public street, whether that street is owned in fee title or through an easement.

This proposed revision ensures that the definition clearly reflects the intent of the City's setback requirements and current practice.

EVALUATION AND FOLLOW-UP

Planning and Public Works staff will be working together to streamline the permit processes for utility structures. Currently, in many cases, two applications are necessary to install a utility structure within a PSE or PUE: an Administrative Permit from the Department of Planning, Building and Code Enforcement and an excavation permit from the Public Works Department. These departments have developed an informal process whereby both permits are processed together and soon will be using a single permit form. AT&T has submitted several permits so that the upgrade in these PSE/PUE areas can move ahead at such time as the ordinance is approved by the Council and the amendment takes effect.

PUBLIC OUTREACH

Public outreach for this proposal complies with the City Council's Public Outreach Policy and the Municipal Code. A public hearing notice including the Planning Commission and City Council hear dates was published in the Post Record and emailed to a list of individuals, businesses, neighborhood associations and other groups who have requested to be notified regarding ordinance or policy changes. Staff has posted the hearing notice, staff report and draft ordinance on the Department's website and has been available to discuss the proposal with interested members of the public.

To date, staff has received a single comment regarding the proposed ordinance from Carol Ashman, dated September 11, 2010 (see attached). Staff has clarified for Ms. Ashman that the current Zoning Ordinance requirements applicable to existing residential neighborhoods allow utility structures on private property only where the rear yard of a residential property abuts a major street, limit the size to 110 cubic feet and generally encourage utility structures located close to the street and outside the backyard fence.

COORDINATION

The preparation of the proposed ordinance and this staff report have been coordinated with the City Attorney's Office and the Public Works Department.

CEQA

Exempt, File No. PP10-150.


JOSEPH HORWEDEL, Director
Department of Planning, Building and Code Enforcement

For more information please call Carol Hamilton at (408) 535-7837.

Attachments: Draft Ordinance
Email from Carol Ashman

DRAFT

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE TO AMEND CHAPTER 20.50 TO ADD A NEW PART 4 CLARIFYING SETBACK REGULATIONS FOR THE INDUSTRIAL DISTRICTS, TO AMEND SECTIONS 20.100.110 AND 20.100.1210 OF CHAPTER 20.100 TO ALLOW UTILITY PROVIDERS TO SIGN DEVELOPMENT PERMIT APPLICATIONS FOR UTILITY WORK OCCURRING ENTIRELY WITHIN PUBLIC SERVICES EASEMENTS OR PUBLIC UTILITY EASEMENTS, TO AMEND SECTION 20.200.700 OF CHAPTER 20.200 TO CLARIFY THE DEFINITION OF FRONT LOT LINE AND MAKING OTHER RELATED, TECHNICAL AND NONSUBSTANTIVE CONFORMING AMENDMENTS TO SAID TITLE 20

WHEREAS, pursuant to the provisions of Title 21 of the San José Municipal Code, the Director of Planning, Building and Code Enforcement has found the provisions of this Ordinance to be categorically exempt from environmental review per the provisions of Section _____ of the California Environmental Quality Act of 1970, together with regulatory guidelines implemented thereunder, all as amended (collectively, "CEQA"), under File No. PP10-150;

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this City Council has considered and approves the exemption determination made under CEQA for this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Chapter 20.50 of Title 20 of the San Jose Municipal Code is amended to add a new part to be numbered, entitled and to read as follows:

Part 4
Setback Regulations

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20.50.270 Setback Areas - Open, Unobstructed, and Unoccupied

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Except as otherwise expressly and specifically provided in other sections of this Title, every part of every setback area shall be kept open, unobstructed, and unoccupied on the surface of the ground, above the surface of the ground, and below the surface of the ground by all buildings or structures except as follows:

1. Sills, eaves, belt courses, cornices, canopies, and other similar architectural features may project horizontally for a distance of not more than two (2) feet into the air space above the surface of the ground in any setback area;
2. Bay windows, on a foundation or cantilevered, or chimneys of up to ten (10) feet in length each, not occupying in the aggregate more than twenty percent (20%) of the length of the side of the building on which they are located, may project horizontally for a distance of not more than two (2) feet into any setback area, provided that such extensions maintain a minimum setback of three (3) feet;
3. Wells for basement windows or stairs of up to ten (10) feet in length each, not occupying in the aggregate more than twenty percent (20%) of the length of the side of the building on which they are located, may project horizontally for a distance of not more than two (2) feet into the side and rear setback area, provided that such extensions maintain a minimum setback of three (3) feet;
4. Overhead wires necessary for electrical and telephone service to a building on the lot;
5. Underground lines necessary for the sewerage, drainage, plumbing, water, gas, and electrical needs of the lot or of a building on the lot; and
6. Walks and driveways for vehicular or pedestrian access to the lot.

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SECTION 2. Part 4 of Chapter 20.50 of Title 20 of the San José Municipal Code is hereby renumbered as follows:

Part 5
Performance Standards

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20.50.300 Performance Standards

- A. In the IP, LI and HI Industrial Districts no primary, secondary, incidental or conditional use or activity related thereto shall be conducted or permitted:
1. In a manner that causes or results in the harmful discharge of any waste materials into or upon the ground, into or within any sanitary or storm sewer system, into or within any water system or water, or into the atmosphere; or
 2. In a manner that constitutes a menace to persons or property or in a manner that is dangerous, obnoxious, or offensive by reason of the creation of a fire, explosion, or other physical hazard, or by reason of air pollution, odor, smoke, noise, dust, vibration, radiation, or fumes; or
 3. In a manner that creates a public or private nuisance.

- B. Without limiting the generality of the preceding subsection, the following specific standards shall apply in the Industrial Zoning Districts:

1. Incineration

There shall be no incineration on any site of any waste material.

2. Vibration

There shall be no activity on any site that causes ground vibration which is perceptible without instruments at the property line of the site.

3. Air Pollution

Total emissions from any use or combination of uses on a site shall not exceed the emissions and health risk thresholds as established by the Director of Planning.

4. Noise

- a. The sound pressure level generated by any use or combination of uses shall not exceed the decibel level at any property line as shown in Table 20-135, except upon issuance and in compliance with a Conditional Use Permit as provided in Chapter 20.100.

Table 20-135 Noise Standards	
	Maximum Noise Level in Decibels at Property Line
Industrial use adjacent to a property used or zoned for residential purposes	55
Industrial use adjacent to a property used or zoned for commercial purposes	60
Industrial use adjacent to a property used or zoned for industrial or use other than commercial or residential purposes	70

SECTION 3. Section 20.100.110 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.100.110 Application

- A. All applications pursuant to this Chapter 20.100 shall be filed with the Director in a form prescribed by the Director.
- B. Except as provided in Subsection C below, a separate application shall be filed for each site and each application shall be signed by:
1. All owners of the real property included in the site or sites; or
 2. Such person or persons having the lawful power of attorney of the property owner or a qualified tenant to apply for development permits; or
 3. By a qualified tenant. A "qualified tenant" for purpose of this Section shall mean the exclusive tenant of the entire site and parcel subject to the application, under a recorded lease which has a remaining term of five or more years at the time of application; or

4. An agent of a Utility Provider, with actual or apparent authority to apply for development permits on behalf of the Utility Provider, when the Utility Provider's development activity will occur entirely within the scope and location of a currently existing public services easement or public utility easement; or

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5. The City Manager of the City of San Jose or the Executive Director of the San Jose Redevelopment Agency for property owned or controlled by that respective entity.

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C. The following provisions shall govern Development Permit applications for the removal and relocation of a building from one parcel to another parcel in the City:

1. A single application pertaining to both parcels shall be required; and
2. The application shall be signed by all of the owners of each parcel or by such person or persons having the lawful power of attorney therefore.

SECTION 4. Section 20.100.1210 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.100.1210 Application - Utility Structure

In addition to the requirements of Section 20.100.110, an application which includes a Utility Structure shall be signed by the Utility Provider. The Utility Provider shall submit the following with the application:

1. Evidence that the Utility Provider has provided at least ten (10) days' prior to application submittal to the City written notice to the owner(s) and occupant(s) of the underlying residential real property for which the application is submitted, and all owners and occupants of residential real property abutting that residential real property, which notice includes of all of the following information;
 - a. The location for the placement of the Utility Structure; and
 - b. The physical dimensions of that Utility Structure; and
 - c. The anticipated dates that work will be occurring on the real property, together with the nature and length of any service interruptions that may affect the residential real properties receiving the notice required pursuant to this section; and

Deleted: Signed consent, on a form provided by the Director, to the placement of the Utility Structure by

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- d. A current and valid phone number of a contact person for the Utility Provider who will be available during specified reasonable hours and can be contacted if issues arise in connection with the Utility Structure; and
- e. Notice that the Utility Provider is first required to obtain an Administrative Permit from the City for the Utility Structure prior to commencement of construction.

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2. Evidence of the private, public utility or public service easement; and
3. A comprehensive network plan showing the locations of each Utility Structure planned by the Provider.

SECTION 5. Section 20.200.700 of Chapter 20.200 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.200.700 Lot Line

"Lot line" is defined to include:

1. "Front lot line" is the boundary line of a lot which abuts the closest edge of a public street, whether that street is owned in fee title or through an easement.
2. "Front lot line of a residentially zoned corner lot" is the narrower lot line abutting a public street.
3. "Side lot line" is the boundary line of a lot which intersects the front lot line, the rear lot line, and any other side lot line.
4. "Side corner lot line of a residentially zoned corner lot" is the longer of the two boundary lines abutting a public street.

"Rear lot line" is the boundary line of a lot which is opposite, and does not intersect, the front lot line.

SECTION 6. Section 20.200.910 of Chapter 20.200 of Title 20 of the San José Municipal Code is hereby amended to read in its entirety as follows:

20.200.910 Provider, Utility

"Provider" or "Utility Provider" shall mean the furnisher of gas, water, telephone, electricity or telecommunications services to inhabitants of the City through a franchise or other legal authority. Telecommunications services includes, but is not limited to, the transmission of voice, data, video or other information by wire, radio, light and other electronic or electromagnetic systems.

PASSED FOR PUBLICATION of title this day of , 2010, by
the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

Hamilton, Carol

From: Carol [mblues@bashman.com]
Sent: Saturday, September 11, 2010 3:35 PM
To: Hamilton, Carol
Subject: Zoning Ordinance Proposed Change

Follow Up Flag: Follow up
Flag Status: Red

Hello Carol,

I read the "white paper" on the proposed ordinance amending Title 20 (the Zoning Ordinance). As I understand it, this would allow utility providers to build utility structures within a public utility easements.

We have such an easement in our backyard. This is to allow PG&E access to some power lines which are near the fence between our home and the former Pleasant Hills Golf Course.

PG&E has come into our backyard several times over the years to trim branches from the trees near the power lines.

My concern is that this proposed change would allow PG&E (or other utility) to build a utility structure in our backyard without our consent. As I did not see a size limitation, this conceivably could put a large structure in our yard. It also could allow PG&E access to our property at all hours of the day & night, depending on the needs of this structure. This would be a serious invasion of our privacy, not to mention health & other concerns.

I would appreciate these concerns being addressed in any proposed change. Thank you.

Carol Ashman